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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,383	12/12/2003	Alain Charles Brainos II	062891.1191	1688
5073	7590	09/19/2006	EXAMINER	
BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980			LAMARRE, GUY J	
			ART UNIT	PAPER NUMBER
			2133	

DATE MAILED: 09/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/735,383	BRAINOS ET AL.	
	<b>Examiner</b> Guy J. Lamarre	<b>Art Unit</b> 2133	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 12/12/03.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-26 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 1-21,23-26 is/are allowed.  
 6) Claim(s) \_\_\_\_\_ is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 12 December 2003 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>12/12/03</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____ .

### Reasons For Allowance

- \* Pursuant to 35 USC 131, **Claims 1-26** are presented for examination.

### Claim Objections

0. **Claim 1** is objected to under 37 CFR 1.75 because 'Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. There may be plural indentations to further segregate subcombinations or related steps. See 37 CFR 1.75 and MPEP 608.01(i)- (p).'

### Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

- 1.1 **Claim 22** is rejected under 35 U.S.C. 101 as claiming non-statutory subject matter: 'software.' Applicant is advised to modify limitations of said claim as being incorporated or embedded in hardware or readable machine medium.

- 1.2 **Claim 22** would be allowable if amended to overcome the rejection under 35 U.S.C. 101.

2. **Claims 1-21, 23-26** are allowable over the prior art.

- 2.1 The following is an Examiner's statement of reasons for the indication of allowable subject matter: the prior art is exemplified by (US Patent No. 6587826) to **Laneman et al.**, (US Patent No. 5487061) to **Bray**, (US Patent No. 6275472) to **Yamaguchi et al.** and (US Patent No. 5953318) to **Nattkemper et al.**

**Laneman et al.** discloses data distribution switching wherein 'partial error flagging is provided, i.e., one or more portions of a given PAC packet that are determined to be in error based on the outer FEC fields can be discarded while other portions of the same packet that are not in error can be used.'

**Bray** discloses data distribution switching techniques wherein '... services provide

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flexible means for controlling selective packet discarding and for minimizing packet delays through the use of multiple service priority and loss priorities. Implementation of this "service class" type of packet treatment is optimal when it is accomplished without increasing the switch traffic and still maintaining conformance with the applicable packet transmission standards.'

**Yamaguchi et al.** discloses a data distribution switching 'method of pass control of transmission cells for successively receiving frames each mapped with a plurality of cells partially including a synchronizing field at a cell processing apparatus, establishing frame synchronization, dealing with one-bit errors in the headers of the cells by correcting the bits, dealing with multi-bit errors of 2 bits or more by establishing synchronization of the cells while discarding cells, and passing cells extracted from the frames through the cell processing apparatus, comprising: monitoring a communication quality of each frame of said successively received frames; temporarily buffering the plurality of cells contained in each monitored frame, frame by frame; determining whether or not the communication quality in bit error of bits comprising said monitored frame exceeds a predetermined threshold of a bit error level; and discarding only a cell or cells each including said one-bit error and/or multi-bit errors in said header from one frame's worth of the buffered cells when said communication quality deteriorates exceeding said threshold bit error level and thus prohibiting said discarded cell or cells from passing through said cell processing apparatus, while, when said communication quality does not exceed said threshold bit error level, discarding only a cell or cells each including said multi-bit errors from said one frame's worth of the buffered cells and thus passing the remaining buffered cells through said cell processing apparatus.'

**Nattkemper et al.** discloses data distribution switching techniques for TDM bus wherein selective packet discarding is performed comprising data multiplexing, data boundary setting within a data stream, e.g., at col. 4 line 4, col. 7 line 45, col. 14 line 20, col. 26 line 40 et seq., wherein "*The ingress architecture of switching subsystem 100 may be implemented as ingress streams or implemented in preferably 16 queues that can be assigned to up to 16 traffic classes with over-subscription. The traffic classes are organized from highest to lowest priority. Each traffic class can be further subdivided into multiple groups, however, each group preferably requires its own queue. Mixed mode scheduler operation is supported in order to provide MCR>0 for some of the lower priority queues. An example configuration, which*

*utilizes 16 queues, could be four traffic classes where each traffic class has four groups. Switching subsystem 100 may provide a tiered congestion hierarchy and each class of service may be at a different congestion state. When switching subsystem 100 is oversubscribed, the lowest priority traffic class will enter the congestion imminent state. Switching system 100 then implements packet discard policies including early packet discard (EPD) or partial packet discard (PPD). The packet level discard algorithms operate on ATM adaptation layer five (AAL5) traffic streams. If the load offered from the remaining higher priority traffic classes remains within the OC-3 limit, then these traffic classes would not enter the EPD state.”*

However, these references do not teach or suggest the combination of claim elements described therein.

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**2.2** Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### **Conclusion**

\* Any response to this action should be mailed to:

Commissioner of Patents and Trademarks, Washington, D.C. 20231

**or faxed to:** (571) 273-8300 for all formal communications.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Guy J. Lamarre, P.E., whose telephone number is (571) 272-3826. The examiner can normally be reached on Monday to Friday from 9:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Albert De Cady, can be reached at (571) 272-3819.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-3609.

Information regarding the status of an application may also be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Guy J. Lamarre, P.E.  
Primary Examiner

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